



Virginia
Regulatory
Town Hall

Final Regulation Agency Background Document

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| Agency Name: | Virginia Department of Social Services |
| VAC Chapter Number: | 22 VAC 40-71-10 et seq. |
| Regulation Title: | Standards and Regulations for Licensed Assisted Living Facilities |
| Action Title: | Implement 2000 Legislation |
| Date: | October 16, 2002 |

Please refer to the Administrative Process Act (§ 9-6.14:9.1 *et seq.* of the *Code of Virginia*), Executive Order Twenty-Five (98), Executive Order Fifty-Eight (99) , and the *Virginia Register Form, Style and Procedure Manual* for more information and other materials required to be submitted in the final regulatory action package.

Summary

Please provide a brief summary of the new regulation, amendments to an existing regulation, or the regulation being repealed. There is no need to state each provision or amendment; instead give a summary of the regulatory action. If applicable, generally describe the existing regulation. Do not restate the regulation or the purpose and intent of the regulation in the summary. Rather, alert the reader to all substantive matters or changes contained in the proposed new regulation, amendments to an existing regulation, or the regulation being repealed. Please briefly and generally summarize any substantive changes made since the proposed action was published.

The name of a home for aged, infirm or disabled adults is changed from “adult care residence” to “assisted living facility.”

The regulation makes an allowance for a shared administrator when an assisted living facility and a nursing home are located in the same building, and when there is a management plan to ensure that residents receive proper care and supervision.

A section regarding freedom of movement for residents is added to the regulation to make sure that no resident’s movement is limited inappropriately.

A clear division is established between standards for special care units for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia and standards for mixed populations as set forth in the regulation. Special care units for residents with dementia may be locked if in conformance with building and fire safety codes. Specific admission, staffing, programmatic and building requirements have been added for special care units to protect the health and safety of the residents.

This regulation also includes changes in the *Code of Virginia* resulting from the following bills enacted by the 2002 General Assembly: House Bill 1084 and Senate Bills 197 and 303. The 2002 revisions were since the proposed action was published. In addition, the regulation includes changes in the *Code of Virginia* resulting from the following bills enacted by the 2000 General Assembly: House Bills 836, 837, 1168, 1169, 1194 and Senate Bill 577. Moreover, the regulation includes changes in the *Code of Virginia* resulting from House Bill 1384 enacted by the 1996 General Assembly. The material in the regulation is taken directly from the *Code*, with some adjustment in format, to make it fit the regulation, but with no elaboration in content, except for clarifying that the clinical psychologist allowed for in HB 1084 be independent (chosen by resident and have no financial interest in the assisted living facility). Without making the changes found in the *Code*, the regulation would not reflect current law.

Statement of Final Agency Action

Please provide a statement of the final action taken by the agency: including the date the action was taken, the name of the agency taking the action, and the title of the regulation.

The State Board of Social Services approved *Standards and Regulations for Licensed Assisted Living Facilities* on October 16, 2002.

Basis

Please identify the state and/or federal source of legal authority to promulgate the regulation. The discussion of this statutory authority should: 1) describe its scope and the extent to which it is mandatory or discretionary; and 2) include a brief statement relating the content of the statutory authority to the specific regulation. In addition, where applicable, please describe the extent to which proposed changes exceed federal minimum requirements. Full citations of legal authority and, if available, web site addresses for locating the text of the cited authority, shall be provided. If the final text differs from that of the proposed, please state that the Office of the Attorney General has certified that the agency has the statutory authority to promulgate the final regulation and that it comports with applicable state and/or federal law.

The following sections of the *Code of Virginia* are the sources of the legal authority to promulgate the regulation: Section 63.2-217 allows State Board to adopt regulations to carry out the purpose Title 63.2; Section 63.2-1732 (mandatory and discretionary) addresses the State Board's overall authority to promulgate regulations for assisted living facilities and specifies content areas to be included in the standards; Section 63.2-1805 (mandatory) relates to admission, retention and discharge of residents; and Section 63.2-1808 (discretionary) relates to

resident rights. Section 63.2-1802 (mandatory and discretionary) specifies that the regulations authorize assisted living facilities to provide safe, secure environments for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia if the facilities comply with the Board's regulations. These regulations must define serious cognitive impairment and safe, secure environment. The *Code of Virginia* may be found on the web at <http://leg1.state.va.us>.

Purpose

Please provide a statement explaining the need for the new or amended regulation. This statement must include the rationale or justification of the final regulatory action and detail the specific reasons it is essential to protect the health, safety or welfare of citizens. A statement of a general nature is not acceptable, particular rationales must be explicitly discussed. Please include a discussion of the goals of the proposal and the problems the proposal is intended to solve.

The regulation is needed in order to replace the emergency regulation, which will expire on October 8, 2002. The replacement regulation covers the same subject matter as the emergency regulation, i.e., areas addressed in House Bill 1251 enacted by 2000 General Assembly and House Bill 2490 enacted by the 2001 General Assembly. The replacement regulation is more specific and provides more detail in certain areas than the emergency regulation in order to adequately protect the health, safety and welfare of vulnerable adults in assisted living facilities. It includes provisions for situations where an administrator is shared between an assisted living facility and a nursing home to ensure the facility is properly managed and resident care remains at an acceptable level. The regulation includes requirements related to admission, care, services, and physical plant to protect residents with serious cognitive impairments due to dementia who reside in special care units. Freedom of movement is also addressed in the regulation to make sure that residents are not limited in movement inappropriately.

The regulation also incorporates other changes relating to assisted living facilities that were made in the *Code of Virginia* in 2002, 2000 and 1996 so that the regulation will be current with the related law.

Substance

Please identify and explain the new substantive provisions, the substantive changes to existing sections, or both where appropriate. Please note that a more detailed discussion is required under the statement of the regulatory action's detail.

The replacement regulation will take the place of the emergency regulation and will address the same subject areas as the emergency regulation. The replacement regulation addresses the changes in the *Code of Virginia* that are a result of House Bill 1251 from the 2000 General Assembly session and House Bill 2490 from the 2001 General Assembly session.

The name of a home for aged, infirm or disabled adults is changed from “adult care residence” to “assisted living facility.” The change in name makes the type of facility and types of services offered more easily recognizable to the general public. This helps to assure the welfare of residents since decisions about placement and continued residence can be made more easily and more quickly.

The regulation makes an allowance for a shared administrator when an assisted living facility and a nursing home are located in the same building, and when there is a management plan to ensure that residents receive proper care and supervision.

A section regarding freedom of movement for residents is added to the regulation to make sure that no resident’s movement is limited inappropriately.

A clear division is established between standards for special care units for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia and standards for mixed populations as set forth in the regulation. Special care units for residents with dementia may be locked if in conformance with building and fire safety codes. Specific admission, staffing, programmatic and building requirements have been added for special care units to protect the health and safety of the residents.

This regulation also includes changes in the *Code of Virginia* resulting from the following bills in the 2002 General Assembly session: House Bill 1084 (resident assessment by a clinical psychologist) and Senate Bills 197 (posting of resident rights) and 303 (recodification of Title 63.1). The 2002 revisions were since the proposed action was published. In addition, the regulation includes changes in the *Code of Virginia* resulting from the following bills in the 2000 General Assembly session: House Bills 836 (community service board access to assisted living facilities), 837 (disclosure of staffing), 1168 (training of mandatory reporters), 1169 (posting related to resident rights), 1194 (training for new applicants for licensure) and Senate Bill 577 (training for new applicants for licensure). In addition, the regulation includes changes in the *Code of Virginia* resulting from House Bill 1384 (Do Not Resuscitate orders) in the 1996 General Assembly session. The material in the regulation is taken directly from the Code, with some adjustment in format, to make it fit the regulation, but with no elaboration in content, except for clarifying that the clinical psychologist allowed for in HB 1084 be independent (chosen by resident and have no financial interest in the assisted living facility). Without making these changes, the regulation would not reflect current law.

Issues

Please provide a statement identifying the issues associated with the final regulatory action. The term “issues” means: 1) the advantages and disadvantages to the public of implementing the new provisions; 2) the advantages and disadvantages to the agency or the Commonwealth; and 3) other pertinent matters of interest to the regulated community, government officials, and the public. If there are no disadvantages to the public or the Commonwealth, please include a sentence to that effect.

One of the advantages to the public of the final regulatory action is the change in name from “adult care residence” to “assisted living facility.” This change makes this type of facility and the services offered more easily recognizable to the public. Another advantage is the increased disclosure requirements relating to resident rights, staffing and services. This allows residents and their families to be more aware of what an assisted living facility offers and what the rules and procedures are regarding resident rights. Additional advantages are greater specificity about who may reside in special care units and increased protections provided in these units. These ensure a better quality of life for residents and a greater degree of comfort for their families.

A possible disadvantage to the public is increased costs to consumers that may occur when a resident resides in a special care unit, since there are increased programmatic requirements.

An advantage to the department is that the proposed regulatory action facilitates the enforcement of legislative mandates. There are no known disadvantages to the department or the Commonwealth.

A matter of interest to some regulated facilities relates to the mandate of Chapter 808 of the 2000 Acts of Assembly, which stated that the regulation take into consideration cost constraints of smaller operations. The Department has carefully considered these cost constraints. Cost impacts, including differential impacts according to facility size, types, locations, etc., are carefully reviewed during the regulatory process. Additional concessions could not be added to the regulation and still adequately protect the health and safety of residents. Residents are equally at risk in smaller facilities as in larger ones and deserve the same protection. The allowable variance process already exists as a means for considering special circumstances and hardships. A facility may request an allowable variance if it believes that a regulation poses a special hardship and that an alternative method of compliance or suspension of a regulation would not endanger the safety and well-being of residents. The Department considers the request and the specific circumstances involved and may grant an allowable variance. There may be some smaller facilities that do not agree with the way the Department has handled the consideration of cost constraints of smaller operations.

In the development of the regulation, the Department has addressed potential conflicts between placement of a resident in a special care unit and the rights of the resident. There is no hard line to be drawn here, however, and some people may not agree on the best way to handle these matters.

Statement of Changes Made Since the Proposed Stage

Please highlight any changes, other than strictly editorial changes, made to the text of the proposed regulation since its publication.

22 VAC 40-71-10: Definitions of “community services board” and “independent clinical psychologist” are added.

22 VAC 40-71-10: Definition of “BOCA®” is deleted since the reference to BOCA® is replaced throughout the regulation with Virginia Uniform Statewide Building Code.

22 VAC 40-71-10: The definition of “safe, secure environment” is changed to mean a special care unit for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia, as in the emergency regulation, rather than the broader definition found in the proposed regulation. The original definition is based on the intent of the *Code*.

22 VAC 40-71-10: The definition of “special care unit” is deleted as this type of setting is now referred to as a “safe, secure environment.”

22 VAC 40-71-10: The definition of “therapeutic goal” is deleted, as the concept is now incorporated into individualized services plan goals.

22 VAC 40-71-45: In respect to facility residents who had previously requested services but were not clients, the role of community services board staff is no longer limited to evaluation.

22 VAC 40-71-50 B 3: The provision that the licensee must provide a safe, secure environment for residents is eliminated, since the definition of safe, secure environment is changed and the provision no longer applies.

22 VAC 40-71-50 D: A clarification is added that owners and currently employed administrators must attend initial training.

22 VAC 40-71-80 B 6: In respect to reporting abuse, neglect or exploitation, reference to the local department of social services was deleted and a note was added referring to the appropriate section of the Code of Virginia.

22 VAC 40-71-80 C: A clarification is added providing that staff orientation occur within the first seven days of employment, and prior to assuming job responsibilities unless under sight supervision.

22 VAC 40-71-170 C: A requirement is added that the individualized service plan be designed to maximize the resident’s level of functional ability.

22 VAC 40-71-270 E: The requirement is changed from posting policies and procedures regarding resident rights to posting the actual resident rights.

22 VAC 40-71-270 G: The subsection is eliminated since requirement is now covered elsewhere.

22 VAC 40-71-410: Language is changed to make simple reference to *Code* section for clarity.

22 VAC 40-71-630 A: The statement regarding the requirements being in lieu of other requirements is moved to clarify that it applies to all of subsection A, not just subdivision A 3.

22 VAC 40-71-700 B 3 and 4: Clarification is made that the training is to commence immediately upon employment.

22 VAC 40-71-700 B 7: Reference to “safe, secure environment” is deleted since the definition is changed and a clarification is added regarding limitations that may be placed on residents in respect to exiting the facility.

22 VAC 40-71-700 C: Term used is changed from “special care unit” to “safe, secure environment.” This change was made at various points throughout the section.

22 VAC 40-71-700 C 1: An independent clinical psychologist is added as an individual able to assess serious cognitive impairment. The requirement that the diagnosis include type or etiology is deleted.

22 VAC 40-71-700 C 2: An addition is made to state that the discharge standards apply.

22 VAC 40-71-700 C 4: A requirement is added that the licensee/administrator or designee determine appropriateness of placement before admitting a resident to a special care unit and that this be documented.

22 VAC 40-71-700 C 5: Review for continued residency in the special care unit is reduced so that after the first year, it is required annually and as needed. For clarity, a change is made so that “licensee/administrator or designee” replaces “facility.”

22 VAC 40-71-700 C 5 and 6: The requirements regarding therapeutic goals are deleted. Concept is added to individualized service plan.

22 VAC 40-71-700 C 16: Clarification is made that the training is to commence immediately upon employment.

22 VAC 40-71-700 C 17 f: Clarification is made that the emphasis should be on planning and facilitating activities appropriate for each resident, rather than for the resident.

22 VAC 40-71-700 C 22: The term “safe, secure environment” is deleted since the definition is changed.

Public Comment

Please summarize all public comment received during the public comment period and provide the agency response. If no public comment was received, please include a statement indicating that fact.

Thirty people submitted comments during the proposed regulations public comment period. Three of them were from assisted living facility corporate offices, one was from an assisted living facility, three were from assisted living facility provider associations, one was from a

provider association for a different industry, eighteen were from relatives of residents, and four were from state agencies.

Regarding 22 VAC 40-71-10, definition of safe, secure environment, two people recommended deleting “primary psychiatric” from diagnosis. They noted that not all physicians consider dementia to be a psychiatric diagnosis. The agency response was to leave the words “primary psychiatric” in since this is how the words are used in the *Code of Virginia*.

Regarding 22 VAC 40-71-10, definition of safe, secure environment, five people recommended going back to the definition as found in the emergency regulation. Some mentioned that the definition in the proposed regulation went beyond the legislative intent. The agency concurred and made the change. Another person suggested modifying the definition and one person supported the definition.

Regarding 22 VAC 40-71-10, definition of safe, secure environment, one person commented that the examples given should have an “or” instead of an “and.” The agency agreed and made the change.

Regarding 22 VAC 40-71-10, definition of serious cognitive impairment, one person recommended eliminating the word “serious.” The agency response was to leave the word “serious” in the definition since this is what is specified in the Code.

Regarding 22 VAC 40-71-10 and 22 VAC 40-71-700 C 5 and 6, two people recommended that the definition and requirements for therapeutic goals be deleted, as the concept was already included elsewhere in the standards. Another person commented that the therapeutic goals seemed redundant. Still another person commented that a clearer definition was needed and that with Alzheimer’s Disease, all an assisted living facility could do was to maintain function as long as possible. The agency response was to delete the definition and requirements related to therapeutic goals and to be more specific regarding maximizing functional ability in the standard regarding service plans.

Regarding 22 VAC 40-71-45, one person was not clear on what community services boards were, so the agency response was to include a definition. Two people expressed concern about community services board access to residents not currently clients. The agency response is that the standard reflects what is in the *Code*.

Regarding 22 VAC 40-71-50 D, one person suggested changes in the language, another person wanted the amount of training needed to be specified, and another person wanted a timeframe for completion of the training if a license was issued. The agency response is to leave the standard as is since it is from the *Code* and any changes are beyond the scope of this revision and will be considered during the comprehensive revision.

Regarding 22 VAC 40-71-60 C, two people suggested changing ‘and’ to “or” as a technical change. The agency response was to leave it as is since the language was taken from the *Code*, and is not in the scope of this revision, but will consider a change in the comprehensive revision.

Regarding 22 VAC 40-71-80 B 6, one person suggested detailing the consequences for not making a report of abuse. The agency response was that it is not appropriate to list the details in the standard, but a reference to the appropriate section of the *Code of Virginia* was added to the standard and also technical assistance will be provided.

Regarding 22 VAC 40-71-150 W, one person commented that the language was confusing. The agency response was to leave the standard as is since that is the way it is worded in the *Code*.

Regarding 22 VAC 40-71-150 W, two people recommended including costs in the description of services, one of these recommended also including information regarding whether the facility was providing the service itself or the service was under contract, and if provided under contract, the responsibility of the facility. The agency response was that the costs are required elsewhere in the regulation, the language is from the *Code* and expanding on it is beyond the scope of this revision but will be considered during the comprehensive revision.

Regarding 22 VAC 40-71-270 E, five people noted that the *Code* was modified regarding the posting of resident rights and the regulation should be revised appropriately. The agency was aware of this and it was done. Another person made recommendations regarding the posting, which either could not be changed because they were specified in the *Code* or go beyond the scope of this revision but will be considered during the comprehensive revision.

Regarding 22 VAC 40-71-275 A, two people recommended being able to keep people in a locked unit who had a cognitive impairment but could recognize danger. The agency disagreed with this since it is seen as a violation of an individual's rights.

Regarding 22 VAC 40-71-175 B, one person commented that residents should be able to lock doors that lead to a patio or balcony. The agency is providing technical assistance on this, which is permitted except under certain circumstances.

Regarding 22 VAC 40-71-410, one person wanted clarification regarding the written order and another person wanted clarification regarding the role of the facility. The agency response is that technical response is appropriate for these clarifications.

Regarding 22 VAC 40-71-700 B 1, one person suggested changing the order of the wording so that it would be similar to the wording for the staffing standard for the special care unit. The agency agreed and the change was made.

Regarding 22 VAC 40-71-700 B 2 and C 15, one person suggested having a definition of "sight and sound supervision." The agency response was that this would better be handled through technical assistance.

Regarding 22 VAC 40-71-700 B 3, one person objected to any decrease in the requirement. The agency response was to leave the standard as is, since although previous training is transferable, it does not reduce the annual training requirement.

Regarding 22 VAC 40-71-700 B 3 and 4 and C 16, two people were confused about what “commencing immediately” meant. The agency response was to make a change in the standard for clarification.

Regarding 22 VAC 40-71-700 B 6, one person recommended that the one hour of orientation be given in the first day and most certainly in the first week. The agency response is that this orientation is on cognitive impairments and not the building, etc. as the person seemed to think. Therefore, no change was made.

Regarding 22 VAC 40-71-700 B 7, two people suggested changing the “and” to “or.” The agency concurred and the change was made.

Regarding 22 VAC 40-71-700 B 7, one person suggested that constant staff oversight not be used as a monitoring device because experience has indicated that it does not work well. The agency response is that if the oversight is really constant, as it should be, it would work so no change was made.

Regarding 22 VAC 40-71-700 B 12, one person suggested adding “areas” that may be harmful, but the agency thought this might create situations where facilities would place unreasonable limits on where a resident could go, therefore no change was made. Also, there are other standards that protect residents from possible harm.

Regarding 22 VAC 40-71-700 C 1, five people recommended deleting the requirement that the diagnosis include type or etiology. Comments included that more tests might be needed, additional costs might be incurred, and there might be delays to admission to the special care unit. The agency agreed and made the deletion.

Regarding 22 VAC 40-71-700 C 1, one person wanted the qualification of the physician to be changed to having experience, rather than being board certified or board eligible. The agency response was to leave the standard as is, since the term “having experience” is vague.

Regarding 22 VAC 40-71-700 C 1, three people noted that the standard should be changed to add clinical psychologist as a result of a change in the *Code*. The agency was aware of this and made the change.

Regarding 22 VAC 40-71-700 C 1, one person suggested that the assessment include identifying areas in which the resident retains partial or full decision making ability. The agency response was to make no change in the standard as that can be addressed if the physician or psychologist so chooses.

Regarding 22 VAC 40-71-700 C 2, one person expressed concern that a decision to remove the resident from the special care unit made by one of the people in the approved order was inadequate and that there should be a conference among specified interested parties regarding the decision. The person also recommended that the facility should be willing to retain the resident for at least two weeks before discharge. Another person commented that a person further down on the list should not be able to supersede someone higher on the list. This person also

recommended that the standard amount of notice be given for discharge. The agency response is that one person is responsible for the decision, but nothing prevents this person from consulting with others. There was technical assistance given regarding the order of priority; a person lower on the list cannot supersede someone higher. The agency agreed that clarification was needed regarding discharge and made an addition to state that the discharge standards apply.

Regarding 22 VAC 40-71-700 C 2 d, one person commented that the first part of the sentence was unnecessary. The agency response was to look at this further in the *Code*, from which the language was taken, and consider during the comprehensive revision. This person also questioned whether the same physician who did the assessment is authorized to approve of the placement. The agency will provide a technical assistance response to this question.

Regarding 22 VAC 40-71-700 C 4 and 5, one person suggested the review only take place when there is a change in the resident's condition. Two people suggested that after the first year, the review be done annually with the uniform assessment instrument and as needed, as well as suggesting that the facility conduct an assessment upon admission. Another person recommended against any reviews. Yet another person suggested that the six months reviews should be the minimum required and there probably should be even more reviews required. The agency response was to revise the standard so that after the first year, the review would be required annually at the time of the uniform assessment instrument and as needed, and a standard was added regarding the facility determining appropriate placement prior to placement.

Regarding 22 VAC 40-71-700 C 5, one person suggested that the regulation be modified to specify that the administrator, rather than the facility, perform the review and that input from some of the people on the list must be obtained. The agency response was to modify the standard so that the licensee/administrator or designee would perform the review, but it did not modify it regarding input because, while desirable, it would be burdensome and is not considered necessary in all instances.

Regarding 22 VAC 40-71-700 C 5, one person recommended that the written determination be provided to the resident's responsible party within one week. The agency response was that this was unnecessary paperwork and if there was to be a discharge or transfer, the responsible person would be notified based on another standard.

Regarding 22 VAC 40-71-700 C 5 on therapeutic goals, one person suggested sharing the goals with the personal representative. Another person recommended focusing the goals on reaching the residents highest practical level of well-being. The agency response was that this standard was deleted, as explained earlier. An addition was made to the standard regarding the individualized service plan with the concept of maximizing the resident's functional ability.

Regarding 22 VAC 40-71-700 C 12, one person recommended that the person responsible for activities should have a 40 hour work week. Another person recommended deleting the 20 hour requirement. The agency made no change in this regard because it would be overly burdensome to require a full-time activity person for a special care unit and it would be inadequate if the person is on the unit less than half-time.

Regarding 22 VAC 40-71-700 C 12, two people suggested that the qualifications for the person responsible for activities be less specific. The agency left the standard as is in order to assure a minimum level of qualifications. Another person suggested the qualification for experience should specify “work” experience. The agency concurred and made the change.

Regarding 22 VAC 40-71-700 C 14, eighteen people recommended that the requirement for two direct care staff members in a special care unit not apply to small homes, stating that one staff person is sufficient for small homes (mostly referring to facilities with no more than five residents). Most stated that requiring two staff would be cost prohibitive. The agency response was not to change the standard, as it is necessary to have two staff immediately available to properly care for the population in a special care unit and to handle emergencies. For special circumstances, an allowable variance may be requested.

Regarding 22 VAC 40-71-700 C 14, one person recommended deleting the requirement for two direct care staff and replacing it with adequate staff. Another person said it was overstaffing to have two staff in each unit in facilities with multiple units. Another person suggested allowing one staff member at night if additional staff is available and immediately accessible. Comments included the considerable cost of having two staff and limitations on flexibility. Another person recommended that restricting the exception to units where there are no more than five residents present be eliminated, so that exception would apply with any number of residents, provided staff in the building are readily available to assist in the unit. The agency response was not to change the standard, as it is necessary to have a minimum of two staff to properly care for the population in a special care unit and to handle emergencies. Moreover, it is common for those with Alzheimer’s Disease to be awake and active during the night. An exception to the two staff requirement was made for a unit with five or fewer residents when additional staff in the same building could safely be made available. For special circumstances, an allowable variance may be requested.

Regarding 22 VAC 40-71-700 C 15, one person questioned why sight and sound supervision was not required within the facility. The agency response is that adequate supervision is required, but to require sight and sound supervision within the facility would be overly burdensome.

Regarding 22 VAC 40-71-700 C 16, one person recommended that the training occur before the employee begins working with residents who have cognitive impairments, rather than within two months of employment. The agency response is that, while desirable, this would be too burdensome because of difficulty in obtaining staff and high staff turnover.

Regarding 22 VAC 40-71-700 17, 20 and 21, one person commented that training early on leads to greater job satisfaction, greater retention of staff and lower costs and therefore, the sooner the training is given the better. The agency response was not to shorten the time allowed for training in order to give providers a reasonable amount of time to train their staff.

Regarding 22 VAC 40-71-700 C 17 f, one person recommended that the training topic regarding activities should address what is appropriate for each resident, rather than for the residents. The agency agreed and made the change.

Part VI and Articles 2 and 3, two people recommended that the standards be amended to utilize the term “assisted living facility” rather than “assisted living care facility.” The agency concurred and the change was made.

One person was concerned that it did not seem that anything was done in the regulation regarding taking cost constraints of smaller operation into consideration. The agency response is that the cost constraints were considered and there was nothing more than what already exists in the standards for smaller facilities that could be revised without endangering the health, safety and welfare of residents. The allowable variance process is available to consider special circumstances.

One person recommended that specific types of training requirements be deleted and that hours of education requirements be standardized. The agency response was that specific training requirements and hours need to be spelled out to ensure that staff are adequately trained in all necessary areas. There is some flexibility in the training standards.

There were several comments made that were beyond the scope of this replacement regulation. These comments will be considered during the next comprehensive review of the regulation.

Detail of Changes

Please detail any changes, other than strictly editorial changes, that are being proposed. Please detail new substantive provisions, all substantive changes to existing sections, or both where appropriate. This statement should provide a section-by-section description - or crosswalk - of changes implemented by the proposed regulatory action. Include citations to the specific sections of an existing regulation being amended and explain the consequences of the changes.

22 VAC 40-71-10: In this section, which includes definitions, the name of a home for aged, infirm or disabled adults is changed from “adult care residence” to “assisted living facility” and the definition of such a facility is clarified. (The name change occurs throughout the regulation.) An exception is added for housing projects for seniors or disabled adults that provide no more than basic coordination of care services when funded by the U.S. Department of Housing and Urban Development, the U.S. Department of Agriculture, or the Virginia Housing Development Authority.

22 VAC 40-71-10: In this section, the definition of “committee” is deleted and the definition of “conservator” is added. The term “committee” is no longer used and has been replaced with “conservator.” (The change occurs in other parts of the regulation.)

22 VAC 40-71-10: In this section, a definition of “community services board” is added.

22 VAC 40-71-10: In this section, a definition of “independent clinical psychologist” is added.

22 VAC 40-71-10: In this section, an occupational therapist is added to the examples of “licensed health care professional.”

22 VAC 40-71-10: In this section, a definition of “mandated reporter” is added.

22 VAC 40-71-10: In this section, the definition of “payee” is eliminated since the word does not appear anywhere else in the regulation.

22 VAC 40-71-10: In this section, a definition of “physician” is added.

22 VAC 40-71-10: In this section, definitions of “safe, secure environment” and “serious cognitive impairment” have been added.

22 VAC 40-71-20: The language regarding the definition of assisted living facility and the exceptions is revised to reflect the changes made in 22 VAC 40-71-10.

22 VAC 40-71-45: A requirement is added that assisted living facilities provide reasonable access to community services boards.

22 VAC 40-71-50 D: A requirement is added that a person applying for an initial license receive training that focuses on health and safety regulations and resident rights.

22 VAC 60 C: An allowance is added for a licensed nursing home administrator to serve as an administrator of an assisted living facility and to serve as the administrator of both an assisted living facility and a nursing home when the facilities are located in the same building.

22 VAC 40-71-60 K: A provision is added for a management plan when an assisted living facility and a nursing home have a single administrator.

22 VAC 40-71-60 L: When a manager is appointed under the provisions of 22 VAC 40-71-60 K, minimum qualifications and annual training requirements are set forth for that person.

22 VAC 40-71-80 B 6: A provision is added that in training personnel, mandated reporters must be informed of consequences for failing to report suspected abuse, neglect, or exploitation of residents. A reference to the appropriate section of the Code of Virginia for procedures for reporting and consequences for not reporting was added.

22 VAC 40-71-80 C: A clarification is added that staff orientation occur within the first seven days of employment, and prior to assuming job responsibilities unless under sight supervision.

22 VAC 40-71-150 W: A requirement is added that, upon admission of a resident and upon request, the assisted living facility provide information on staff and services.

22 VAC 40-71-170 C: A requirement is added that the individualized service plan be designed to maximize the resident's level of functional ability.

22 VAC 40-71-270 E: Specifications are made relating to the posting of resident rights.

22 VAC 40-71-270 G: The requirement regarding the accessibility of resident rights and the inclusion of various telephone numbers with a copy of resident rights is deleted since it is added to that which is provided for in 22 VAC 40-71-270 E.

22 VAC 40-71-275: A provision is added that residents who do not have serious cognitive impairments and an inability to recognize danger or protect their own safety and welfare must be able to freely leave the facility. A prohibition is added to prevent the facility's locking doors from the inside that lead to the outside, except for special care units for residents with serious cognitive impairment due to dementia. A provision is added ensuring that residents have freedom of movement within the facility.

22 VAC 40-71-410: Provision is made for an employee with a current certification in cardiopulmonary resuscitation to carry out a Do Not Resuscitate order in an assisted living facility.

22 VAC 40-71-630 A: The statement regarding the requirements being in lieu of other requirements is moved to clarify that it applies to all of subsection A, not just subdivision A 3.

22 VAC 40-71-700: This section, which has requirements to protect residents with serious cognitive impairments who cannot recognize danger and protect their own safety and welfare, is reorganized. Subsection B now applies to mixed populations, i.e., any combination of (i) residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who can't recognize danger or protect their own safety and welfare, (ii) residents with serious cognitive impairments due to any other diagnosis who can't recognize danger or protect their own safety and welfare, and (iii) other residents. Subsection B also applies when all the residents are described by (ii) in the previous sentence. Subsection C now applies to special care units only for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare.

22 VAC 40-71-700 B: In this subsection, which relates to mixed populations, language relating to cognitive impairments clarifies that the requirements are not limited to Alzheimer's Disease and related disorders. The following are other changes in this subsection.

22 VAC 40-71-700 B 1: A clarification that staff be awake and on duty is added and a note is added clarifying that the exception allowing a staff person to be asleep at night does not apply.

22 VAC 40-71-700 B 3 and 4: A provision is added to each of these subdivisions that previous training in the year prior to employment is transferable. Clarification is made that the training is to occur commencing immediately upon employment.

22 VAC 40-71-700 B 5 f: A topic on safety considerations is added to the cognitive impairment training curriculum.

22 VAC 40-71-700 B 6: A change allows for one month after employment rather than one week for the completion of the one hour of orientation for employees other than the administrator and direct care staff.

22 VAC 40-71-700 B 7: A clarification is added that the security monitoring applies to residents with serious cognitive impairments who can't recognize danger or protect their own safety and welfare. Also, constant staff oversight and delayed egress mechanisms are added to the examples of monitoring systems. Residents with serious cognitive impairments who can't recognize danger or protect their own safety and welfare may be limited in respect to leaving the facility if their records reflect the basis for determining that they have such a condition.

22 VAC 40-71-700 B 12: A requirement is added that protects seriously cognitively impaired residents from potentially harmful materials and objects.

22 VAC 40-71-700 C: This subsection now relates to safe, secure environments only for residents with serious cognitive impairments due to a primary psychiatric diagnosis of dementia who cannot recognize danger or protect their own safety and welfare. The exception to the subsection for facilities licensed for ten or fewer residents no longer applies to special care units. An exception has been added that allows a resident's spouse, parent, adult sibling or adult child who otherwise would not meet the criteria to reside in a special care unit to live in the unit if certain conditions are met. In addition to these revisions, the following are the requirements that are changed or added.

22 VAC 40-71-700 C 1: A requirement is added for a physician assessment or an assessment by a clinical psychologist that shows that a resident has a serious cognitive impairment due to a primary psychiatric diagnosis of dementia and is unable to recognize danger or protect his own safety and welfare. The assessment is to include specified areas.

22 VAC 40-71-700 C 2: A requirement is added that the facility obtain written approval to place a resident in a safe, secure environment from a person in a specified order of priority.

22 VAC 40-71-700 C 3: A provision is added for documentation that the order of priority in 22 VAC 40-71-700 C 2 was followed.

22 VAC 40-71-700 C 4: A requirement is added that the licensee/administrator or designee determine appropriateness of placement before admitting a resident to a special care unit and that this be documented.

22 VAC 40-71-700 C 5: A requirement is added for a periodic review of each resident regarding the appropriateness of continued residence in a special care unit.

22 VAC 40-71-700 C 6, 7 and 8: Types of activities to be available are specified and a provision is made for encouragement and assistance regarding resident participation in activities.

22 VAC 40-71-700 C 9: A provision is made for unscheduled staff and resident interaction in addition to scheduled activities.

22 VAC 40-71-700 C 10: There is a requirement that residents are to be given the opportunity daily to be outdoors, weather permitting.

22 VAC 40-71-700 C 11: A provision is added that, as appropriate, residents are to be encouraged to participate in supervised activities outside the special care unit.

22 VAC 40-71-700 C 12 and 13: A requirement is added that there be a person responsible for management or coordination of the activities program, that this person meet one of the qualifications outlined and that the qualification be documented.

22 VAC 40-71-700 C 14: There is a clarification that staff must be awake and on duty and that the exception for staff to be asleep at night does not apply here. There is an exception allowing one staff member rather than two that applies under certain circumstances if there are no more than five residents present in the special care unit.

22 VAC 40-71-700 C 16, 17, 18 and 19: The cognitive impairment training requirements that must occur within a specified time after employment for administrators and direct care staff are revised. The time period for receiving the training and the amount of training are changed, and the curriculum is more extensive. There is a provision for transfer of training completed in the year prior to employment. The qualifications of the persons developing and providing the training are addressed more specifically.

22 VAC 40-71-700 C 20: The first year training requirement for direct care staff is increased by four hours.

22 VAC 40-71-700 C 21: A change is made that allows for one month after employment rather than one week for the completion of the one hour of orientation for employees other than the administrator and direct care staff.

22 VAC 40-71-700 C 22: A specification is added that special care units may be locked if there is conformance with applicable building and fire codes.

22 VAC 40-71-700 C 26: A requirement is added that buildings that are new or have a change in use group have a window in at least one of the common rooms.

22 VAC 40-71-700 C 28: A requirement is added protecting residents from potentially harmful materials and objects.

22 VAC 40-71-700 C 29: Environmental enhancements are provided to promote the residents' independence and dignity.